

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGELA KAY MCCREERY,

Plaintiff,

Case No.: 05-CV-74652

vs.

HON. GEORGE CARAM STEEH
MAG. JUDGE WALLACE CAPEL, JR.

GOPAL SINGAL,

Defendant.

_____ /

REPORT AND RECOMMENDATION

I. INTRODUCTION

This is a pro se civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff Angela McCreery claims that the Defendants violated her rights under the Eighth Amendment by being deliberately indifferent to her medical needs. Presently before the Court is “Defendant Gopal Singhal’s Motion to Dismiss Under FRCP 12(b)(6) and 42 U.S.C. § 1997e,” filed January 31, 2006. Plaintiff’s Complaint should be dismissed without prejudice because she has failed to exhaust her administrative remedies as to all Defendants.

II. ANALYSIS

Under the Prison Litigation Reform Act [PLRA], a prisoner must exhaust all available administrative remedies before filing a federal lawsuit challenging his conditions of confinement. See 42 U.S.C. § 1997e(a); Wyatt v. Leonard, 193 F.3d 876, 877 (6th Cir. 1999). To demonstrate exhaustion of administrative remedies, a prisoner should attach the decision containing the administrative disposition of his grievance, or in the absence of written documentation, describe with

specificity the administrative proceedings and its outcome. See Brown v. Toombs, 139 F.3d 1102, 1104 (6th Cir. 1998). A prisoner must exhaust administrative remedies as to each defendant and claim identified in the complaint. See Curry V. Scott, 249 F.3d 493, 505 (6th Cir. 2001). If you fail to exhaust your administrative remedies or only partially exhaust them prior to filing your complaint in federal court, dismissal of the complaint is appropriate. Smith v. Federal Bureau of Prisons, 300 F.3d 721, 723 (6th Cir. 2002).

The undersigned has reviewed the pleadings and documents provided by the Plaintiff in this case, and the documents fail to establish that she filed and completed the grievance process in regard to Defendant Sawhney. In Bey v. Johnson, 407 F.3d 801, 805 (6th Cir. 2005), the Sixth Circuit held that the PLRA requires complete dismissal of a prisoner's complaint when that prisoner alleges both exhausted and unexhausted claims. That is exactly the situation here. Plaintiff's Complaint, therefore, must be dismissed without prejudice.

III. CONCLUSION

For the reasons stated above, it is respectfully recommended that Plaintiff's Complaint be **DISMISSED WITHOUT PREJUDICE**.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the parties are hereby notified that within ten days after being served with a copy of this recommendation that they may serve and file specific, written objections to the proposed findings and recommendations. Further, either party may respond to another party's objections within ten days after being served with a copy thereof. The parties are further informed that failure to timely file objections may constitute a waiver of any further right of appeal to the United States Court of Appeals. United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

In accordance with the provisions of Rule 6(b) of the Federal Rules of Civil Procedure, the Court, in its discretion, may enlarge the period of time in which to file objections to the report.

s/Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE

Date: March 16, 2006

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Kimberley A. Koester, 40950 Woodward Avenue, Suite 120, Bloomfield, Michigan 48304,

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s): Angela Kay McCreery, #444763, Robert Scott Correctional Facility, 47500 Five Mile Road, Plymouth, Michigan 48170.

s/James P. Peltier
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